

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES

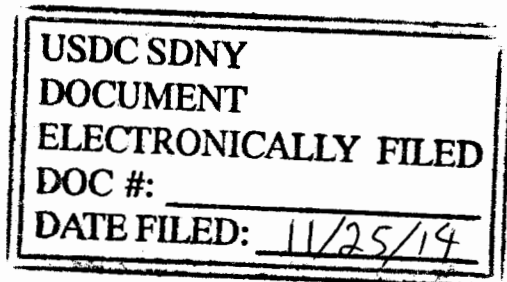
- against -

LUCHO BAEZ PEÑA,

Defendant.

13 Crim. 44 (TPG)

**OPINION**



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On October 3, 2013, the court imposed a sentence of 18 months prison in this case, and stated on the record that defendant would be given credit for time served.

Prior to the date of the sentence, defendant had been in home confinement for a year. He continued in home confinement until he actually surrendered to the prison on December 2, 2013. He is still in prison, but will be subjected to the steps taken by the Bureau of Prisons as the conclusion of the sentence draws near.

It is the policy of the Bureau of Prisons that home confinement will not be credited against a sentence as "time served." Thus, the Bureau of Prisons has not given defendant credit for his home confinement against the 18 month sentence.

The policy of the Bureau of Prisons follows the law in this Circuit. Time spent in official detention may be credited against a sentence as “time served.” 18 U.S.C. § 3585(b). However, time spent under restrictive pre-sentence release conditions, even involving home confinement and electronic monitoring, is not official detention in the meaning of that statute. *See United States v. Edwards*, 960 F.2d 278, 282-83 (2d Cir. 1992) (*overturned on other grounds by United States v. Wilson*, 503 U.S. 329 (1992)).

The court has received a letter dated November 12, 2014 from an attorney for defendant’s family, asking if the time on home confinement should be deducted from the 18 months of the sentence.

The court wishes to say now that it has no intention of dealing with the sentence in a way that contradicts Bureau of Prisons policy, which, as stated, does not give credit for home confinement against a sentence. The letter of November 12, 2014, does not really take any position to the contrary, but simply asks how the matter is to be treated. This opinion answers that question.

Dated: New York, New York  
November 25, 2014

SO ORDERED

A handwritten signature in black ink, reading "Thomas P. Griesa". The signature is written in a cursive, flowing style. The first name "Thomas" is written with a large, prominent "T". The last name "Griesa" is written with a large, prominent "G". The signature is written over a horizontal line.

Thomas P. Griesa  
U.S.D.J.